

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

DEBORAH A. BRODIE,

Plaintiff,

v.

NORTHWEST TRUSTEE
SERVICES, INC., et al.,

Defendants.

NO: 12-CV-0469-TOR

ORDER GRANTING DEFENDANTS'
MOTIONS TO DISMISS FOR
FAILURE TO STATE A CLAIM

BEFORE THE COURT are motions to dismiss for failure to state a claim filed by Defendants Northwest Trustee Services (ECF No. 36) and JPMorgan Chase Bank and U.S. Bank (ECF No. 50). The first motion was set for hearing without oral argument on December 10, 2012, while the second was set for hearing without oral argument on December 27, 2012. Briefing by the parties is complete and there is no reason to delay a decision. The Court has reviewed the motions, the responses, and the replies, and is fully informed.

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PROCEDURAL HISTORY

On September 27, 2012, the Court granted Defendants' motion to dismiss Plaintiff's First Amended Complaint for failure to state a claim. ECF No. 34. This ruling permanently disposed of Plaintiff's claims against Defendants JPMorgan Chase Bank and U.S. Bank (collectively "JPMorgan Chase") and Defendant Northwest Trustee Services ("NWTs") for (1) wrongful foreclosure / lack of standing to foreclose (lack of security interest theory), (2) violations of the Washington Consumer Protection Act ("CPA") (fraudulent inducement and improper underwriting theories); (3) negligence (breach of duty of good faith and fair dealing theory); (4) preliminary injunctive relief; (5) permanent injunctive relief (fraudulent inducement and improper underwriting theories); (6) a declaratory judgment; (7) slander of title; (8) quiet title; (9) predatory lending; (10) violations of the Truth in Lending Act; and (11) violations of the Real Estate Settlement Procedures Act. ECF No. 34. The Court also dismissed the following claims with leave to amend: (1) wrongful foreclosure / lack of standing to foreclose (robo-signing of documents theory); (2) negligence (robo-signing of documents theory); (3) violation of the CPA (robo-signing of documents theory); and (4) permanent injunctive relief (robo-signing of documents theory). ECF No. 34

1 Plaintiff filed a Second Amended Complaint¹ on October 10, 2012. ECF
2 No. 35. JPMorgan Chase and NWTs now move to dismiss the Second Amended
3 Complaint on the ground that Plaintiff failed to cure the deficiencies which
4 warranted dismissal of her First Amended Complaint. NWTs further asserts that
5 Plaintiff's allegations of robo-signing fail to state a claim as a matter of law
6 because Plaintiff lacks standing to challenge the allegedly forged documents. For
7 the reasons discussed below, the Court will dismiss Plaintiff's causes of action
8 against JPMorgan Chase and NWTs with prejudice.

9 LEGAL STANDARD

10 The legal standards applicable to a motion to dismiss pursuant to Federal
11 Rule of Civil Procedure 12(b)(6) are set forth in detail in the Court's prior order.
12 See ECF No. 34 at 4-6. Briefly, dismissal for failure to state a claim is appropriate
13 when a complaint lacks a cognizable legal theory or fails to allege sufficient facts

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15 ¹ In its September 27 Order, the Court directed Plaintiff to label any subsequent
16 pleading as an "Amended Complaint." ECF No. 34 at 22. Given that this Order
17 dismissed Plaintiff's First Amended Complaint, however, the Court should have
18 directed Plaintiff to label any subsequent pleading as a "*Second* Amended
19 Complaint." In the interest of clarity, the Court will refer to the operative
20 complaint (ECF No. 35) as the "Second Amended Complaint" in this Order.

1 in support of such a theory. *Balistreri v. Pacifica Police Dep't*, 901 F.2d 696, 699
2 (9th Cir.1990). To survive such a motion, a plaintiff must allege facts which, when
3 taken as true, “state a claim to relief that is plausible on its face.” *Ashcroft v. Iqbal*,
4 556 U.S. 662, 678 (2009) (quotation and citation omitted).

5 ANALYSIS

6 In its September 27 Order, the Court granted Plaintiff leave to amend her
7 complaint as to four claims, all of which hinged upon allegations that the
8 Assignment of Deed of Trust and Appointment of Successor Trustee documents
9 were “robo-signed” by individuals who lacked proper authority to execute them.
10 In reaching this decision, the Court found that Plaintiff’s allegations were
11 impermissibly conclusory in that Plaintiff had failed to plead specific facts to
12 support her assertions that the documents in question were executed by “known
13 robo-signers.” ECF No. 34 at 11-12. In accord with Ninth Circuit precedent, the
14 Court granted Plaintiff leave to amend her complaint to provide further factual
15 support for her allegations of robo-signing. Because the parties did not raise the
16 issue, the Court did not address whether Plaintiff’s allegations of robo-signing (if
17 properly supported) would state a legally cognizable claim.

18 Defendant NWTs now asserts that the allegations of robo-signing in
19 Plaintiff’s Second Amended Complaint fail as a matter of law because Plaintiff
20 lacks standing to challenge the allegedly fraudulent agreements. The Court agrees.

1 Several courts faced with similar allegations of robo-signing have concluded that a
2 borrower lacks standing to challenge an allegedly fraudulent assignment of a deed
3 of trust and/or an appointment of a successor trustee. *See, e.g., In re MERS*
4 *Litigation*, 2012 WL 932625 at *3 (D. Ariz., March 20, 2012) (unpublished)
5 (holding that allegations of robo-signing failed to state a claim because plaintiff
6 lacked standing to challenge assignment); *Kuc v. Bank of Am., NA*, 2012 WL
7 1268126 at *2 (D. Ariz., Apr. 16, 2012) (unpublished) (“[P]laintiff, as a third-party
8 borrower, does not have standing to challenge the validity of any allegedly
9 ‘robosigned’ recorded assignments.”); *Javaheri v. JPMorgan Chase Bank N.A.*,
10 2012 WL 3426278 at *6 (C.D. Cal., Aug. 13, 2012) (unpublished) (accepting
11 allegations of robo-signing as true, but holding that plaintiff lacked standing to
12 challenge substitution of trustee agreement). The rationale for these decisions is
13 that a borrower cannot be injured by the allegedly fraudulent conduct because the
14 borrower is neither a party to nor an intended beneficiary of the challenged
15 agreements. *See In re MERS Litigation*, 2012 WL 932625 at *3 (borrower could
16 not demonstrate injury attributable to alleged robo-signing because borrower was
17 “uninvolved and unaffected by the alleged[ly] [fraudulent] Assignments”); *Kuc*,
18 2012 WL 1268126 at *2 (same); *Javaheri*, 2012 WL 3426278 at *6 (same). As
19 Judge Wright of the Central District of California explained in *Javaheri*,

20 Only someone who suffered a concrete and particularized injury that
 is fairly traceable to the substitution [of a trustee] can bring an action

1 to declare the assignment [of the new trustee] as void. . . . [Plaintiff]
2 was not party to this assignment, and did not suffer any injury as a
3 result of the assignment. Instead, the only injury [plaintiff] alleges is
4 the pending foreclosure on his home, which is the result of his default
5 on his mortgage. The foreclosure would occur regardless of what
6 entity was named as trustee, and so [plaintiff] suffered no injury as a
7 result of this substitution. . . . In sum, [plaintiff] . . . lacks standing to
8 assert his robo-signing contentions.

2012 WL 3426278 at *6 (internal citations omitted).

9 The Court finds the above reasoning persuasive. Because Plaintiff is neither
10 a party to nor a third-party beneficiary of the Assignment of Deed of Trust or the
11 Appointment of Successor Trustee, she could not have been injured by the alleged
12 robo-signing of these documents. To the extent that these documents were in fact
13 robo-signed, they would be *voidable* at the injured party's option. *In re MERS*
14 *Litigation*, 2012 WL 932625 at *3; *see also Bateman v. Countrywide Home Loans*,
15 2012 WL 5593228 at *4 (D. Hawaii, Nov. 14, 2012) (unpublished) ("The reason
16 debtors generally lack standing to challenge assignments of their loan documents is
17 that they have no interest in those assignments, and the arguments they make do
18 not go to whether the assignments are void *ab initio*, but instead to whether the
19 various assignments are voidable. Debtors lack standing to challenge voidable
20 assignments; only the parties to the assignments may seek to avoid such
assignments.") (citing *Williston on Contracts* § 74:50 (4th ed.)). Contrary to
Plaintiff's assertions, robo-signing of the Assignment of Deed of Trust and/or the
Appointment of Successor Trustee would not render these agreements—let alone

1 the underlying debt obligation—void *ab initio*. At bottom, the alleged misconduct
2 had no bearing whatsoever upon Plaintiff’s obligation to make her mortgage
3 payments. Thus, even assuming *arguendo* that Plaintiff’s allegations of robo-
4 signing are now pled with sufficient particularity, these allegations fail to state a
5 claim as a matter of law. Accordingly, Plaintiff’s causes of action against
6 JPMorgan Chase, U.S. Bank and Northwest Trustee Services—all of which relate
7 to Plaintiff’s robo-signing allegations—are dismissed with prejudice.

8 **ACCORDINGLY, IT IS HEREBY ORDERED:**

- 9 1. The motions to dismiss filed by Defendant Northwest Trustee Services
10 (ECF No. 36) and Defendants JPMorgan Chase Bank and U.S. Bank
11 (ECF No. 50) are **GRANTED**.

12 a. The following causes of action are dismissed **with prejudice**:

13 i. Wrongful Foreclosure / Lack of Standing to Foreclose
14 (robo-signing of documents);

15 ii. Consumer Protection Act (robo-signing of documents);

16 iii. Negligence (robo-signing of documents);

17 iv. Permanent Injunction (robo-signing of documents).

- 18 b. The District Court Executive shall terminate Defendants JPMorgan
19 Chase Bank, NA; U.S. Bank National Association; and Northwest
20 Trustee Services and enter judgment accordingly.

1 The District Court Executive is hereby directed to enter this Order and
2 provide copies to counsel.

3 **DATED** this 12th day of December, 2012.

4 *s/ Thomas O. Rice*

5 THOMAS O. RICE
6 United States District Judge
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